



Research Regarding Emergency Ordinances

April 2015

The Significance of Emergency Ordinances

The Ohio Constitution, the Ohio Revised Code, and the Charter of the City of Cincinnati make ordinances passed by City Council subject to the citizens' right to challenge the ordinance by referendum. The constitutional guarantee to challenge an ordinance by referendum has been called "an invaluable arm of the democratic process" by Ohio courts.¹

The United States Supreme Court has called the right to referendum "a means for direct political participation, allowing the people the final decision, amounting to a veto power, over enactments of representative bodies," a practice that "is designed to 'give citizens a voice on questions of public policy.'"²

There is an important exception to the general rule that all ordinances are subject to referendum. Both the Ohio Constitution and the Ohio Revised Code permit an ordinance to go into immediate effect and to be shielded from a potential referendum vote if the ordinance is passed as an emergency.³

¹ *Walsh v. Cincinnati City Council* (1977), 54 Ohio App.2d 107, 109, 8 O.O.3d 208, 210, 375 N.E.2d 811, 813. See, also, *State ex rel. Nolan, v. ClenDenning* (1915), 93 Ohio St. 264, 277, 112 N.E. 1029, 1032.

² *City of Eastlake et al. v. Forest City Enterprises, Inc.* (1976), 426 U.S. 668, 49 L.Ed.2d 132

³ **Sec. 1, Art. II of the Ohio Constitution states, in part:** "The legislative power of the state shall be vested in a general assembly....but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote...." **Sec. 1f, Art. II states:** "The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law." **R.C. 731.29 states, in part:** "Any ordinance or other measure passed by the legislative authority of a municipal corporation shall be subject to the referendum except as provided by section 731.30 of the Revised Code. No ordinance or other measure shall go into effect until thirty days after it is filed with the mayor of a city or passed by the legislative authority in a village,

“By declaring an act an emergency measure a municipal legislature effectively insulates the results of its decision from immediate and specific electoral scrutiny, scrutiny normally guaranteed by [Ohio’s Constitution.]”⁴ .

Passage of emergency ordinances is addressed in Cincinnati’s City Charter Article II, Section 3:

The initiative and referendum powers are reserved to the people of the city on all questions which the council is authorized to control by legislative action; such powers shall be exercised in the manner provided by the laws of the state of Ohio. Emergency ordinances upon a yea and nay vote must receive the vote of the majority of the members elected to the council, and the declaration of an emergency and the reasons for the necessity of declaring said ordinances to be emergency measures shall be set forth in one section of the ordinance, which section shall be passed only upon a yea and nay vote of two-thirds of the members elected to the council upon a separate roll call thereon. If the emergency section fails of passage, the clerk shall strike it from the ordinance and the ordinance shall take effect at the earliest time allowed by law.

On March 5, 2013, Cincinnati City Council passed an ordinance that permitted the City Manager to enter a long-term lease of the city’s parking meters and some municipal garages. Several citizens filed a taxpayer lawsuit against the city and sought a temporary restraining order “enjoining the city and the city manager from taking any action in furtherance of the ordinance.”⁵ The plaintiffs in the lawsuit argued that the first sentence of Article II, Section 3 of the Charter should be read to provide for referendum on all ordinances, including emergency legislation. They argued that the rest of the section should be interpreted to mean that when a referendum occurs, it will follow the procedural requirements of state law, but that nothing in the second clause should be read to contradict the absolute right to referendum contained in the first clause.

except as provided by such section.....” And **R.C. 731.30 states, in part:** “....emergency ordinances or measures necessary for the immediate preservation of the public peace, health, or safety in such municipal corporation, shall go into immediate effect. Such emergency ordinances or measures must, upon a yea and nay vote, receive a two-thirds vote of all the members elected to the legislative authority, and the reasons for such necessity shall be set forth in one section of the ordinance or other measure.”

⁴ *State ex rel. Emrick, supra.*

⁵ *State ex rel. McQueen et al. v. Dohoney et al.* (OH 1st Dist. 2013) No. C-130196

The trial court agreed with the plaintiffs and “concluded that because the Charter referred to ‘all’ legislation and did not expressly exempt from referendum emergency ordinances, the Charter created a right of referendum as to an emergency ordinance.” The court determined that Art. II, Sec. 3 of the Charter was inherently ambiguous, and construed the ambiguity in favor of expanding rather than limiting the right to referendum.⁶

The Court of Appeals reversed the ruling. The court noted that “Charter municipalities such as Cincinnati have the power to adopt referendum provisions that differ from the state law provisions, and these provisions will be enforced if they do not conflict with Ohio's Constitution.” Cincinnati has the *option* of making *all* ordinances, including emergency ordinances, subject to referendum. However, the Court of Appeals determined that the lower court erroneously found ambiguity in this section of the Charter. Noting, in part, that “Cincinnati's charter uses the same sentence construction and almost the same phraseology as [the] Ohio Constitution,” the court determined that the Charter was written to intentionally mirror the referendum provisions in the Constitution. This means that “validly enacted emergency ordinances are not subject to referendum in Cincinnati.”⁷

Issue: Is the Power Abused?

The basic concept that some ordinances should go into effect immediately and not be subjected to the uncertainties of potential referendum challenges seems to enjoy broad acceptance. Citizens want their city governments to be able to act nimbly and efficiently, particularly in times of crisis; but some citizens have raised the concern that Cincinnati City Council abuses its authority to pass emergency legislation.

This concern arises from both the nebulous standard for declaring an ordinance an “emergency” as well as the frequency with which emergency passage is used. Generally speaking, “the duty and responsibility for determining an emergency is vested solely in the municipal legislature,” and the necessity of emergency passage is a matter of discretion left up to city councils.⁸ With some theoretical boundaries discussed in the “Analysis” section of this research, essentially any vague justification is sufficient for City Council to pass an ordinance as an emergency. There is no need to justify an “emergency” in the ordinary usage of the word.

⁶ *Id.*

⁷ *Id.*

⁸ *State ex rel. Emrick, et al. v. Wasson, City Clerk, et al.* (1990), 62 Ohio App.3d 498, 576 N.E.2d 814.

This lax standard for justifying emergency passage has resulted in “emergencies” becoming the normal mode of Council business. In 2011, the *Business Courier* found that “of the 339 ordinances passed by City Council at nearly three dozen meetings over the past year; 254 of them were emergencies. That’s nearly 75 percent.”⁹ In 2011 litigation challenging the use of emergency status, Cincinnati’s Law Department asked the court to “take judicial notice of the fact that the vast majority of ordinances are adopted as emergency ordinances.”¹⁰

There can be no dispute that emergency ordinances are almost always passed in the absence of any circumstance that would constitute an “emergency” in the ordinary usage of the word. There is also no dispute that this maneuver is taken in order to: 1) permit ordinances to go into immediate effect; and 2) ensure that the acts of Council are not subject to the citizens’ right to referendum. The policy question posed is whether or not this justifies some change in the balance between the need to address “emergencies” -- both large and small – and the constitutional right of the people to challenge legislation by referendum.

Comparison to Other Cities

The passage of emergency ordinances and the manner in which they effect the right to referendum is an issue that emanates from the Ohio Constitution. Therefore, Cincinnati’s approach to emergency ordinances is compared here to Ohio’s five other largest cities, plus Youngstown: Akron, Cleveland, Columbus, Dayton, Toledo and Youngstown.¹¹

Columbus

The City of Columbus makes all legislation effective 30 days after passage with the exception of emergency ordinances. Sec. 22 of the Columbus Charter permits its council to “pass emergency measures to take effect at the time indicated therein.” “An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health or safety, or providing for an emergency in the usual daily operation of a municipal department, in which the emergency is set forth and defined in a preamble thereto.” Certain ordinances cannot be passed as emergencies: “measure making a grant, renewal or

⁹ May, Lucy. “City Council, what’s your emergency?” *Cincinnati Business Courier* Oct. 28, 2011: p1

¹⁰ Motion To Dismiss Under Civil Rules 12(B)10 And 12(B)(6) p. 10 filed by the City of Cincinnati in *State ex rel Phillips Supply Company, et al. v. City of Cincinnati, et al.* (Ham. Co. 2011) Case No. A1104905

¹¹ Ohio’s ten largest cities according to the 2010 U.S. Census are: Columbus 787,033; Cleveland 396,815; Cincinnati 296,943; Toledo 287,208; Akron 199,110; Dayton 141,527; Parma 81,601; Canton 73,007; Youngstown 66,982; Lorain 64,097. Para, Canton and Lorain are all statutory cities, meaning that they do not have city charters and defer to the Ohio Revised Code.

extension of a franchise or other special privileges, or regulating the rate to be charged for its service by any public utility.”¹²

Sec. 54 of the Columbus Charter makes emergency ordinances “subject to referendum in like manner as other ordinances.” The distinction between emergency passage and ordinary passage is that a referendum petition submitted within 30 days of passage can stop an ordinary ordinance from going into effect pending the outcome of a referendum vote. By contrast, an emergency ordinance goes into immediate effect. “If, when submitted to a vote of the electors, an emergency measure” is reversed by a majority vote, “it shall be considered repealed as regards any further action thereunder; but such measure so repealed shall be deemed sufficient authority for payment, in accordance with the ordinance, of any expense incurred previous to the referendum vote thereon.”

Sec. 55 of the Columbus Charter specifies certain ordinances that are never subject to referendum:

(a) The annual appropriation ordinance.

(b) In all cases where council is required to pass more than one ordinance or other measure to complete the legislation necessary to make and pay for any public improvement, the referendum shall apply only to the first ordinance or measure required to be passed and not to any subsequent ordinances or measures relating thereto, and said first ordinance or measure shall clearly state the purpose and general scope of the improvement.

(c) Ordinances or resolutions providing for the approval or disapproval of appointments or removals by the mayor, and appointments or removals made by council.

(d) Action by the council on the approval of official bonds.

(e) Ordinances or resolutions providing for the submission of any proposition to a vote of the electors.

Cleveland

Sec. 36 of Cleveland’s charter provides that all ordinances shall go into effect 30 days after passage, except that “emergency measures [are] to take effect at the time indicated in the emergency measure.” “An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health, or safety, or providing for the usual daily operation of a Municipal department, in which the emergency is set forth and defined in a

¹² Columbus City Charter § 23

preamble.” Certain ordinances may not be passed by emergency: “Ordinances appropriating money may be passed as emergency measures, but no measure making a grant, renewal or extension of a franchise or other special privilege, or regulating the rate to be charged for its services by any public utility, shall ever be so passed.”

Cleveland makes *some* emergency measures subject to referendum. Sec. 64 of the Cleveland Charter states:

Ordinances passed as emergency measures for the immediate preservation of the public peace, property, health, or safety and providing for the refinancing of bonds, notes or other securities of the City shall not be subject to referendum. Otherwise, emergency measures shall be subject to referendum in like manner as other ordinances, except that they shall go into effect at the time indicated in the ordinances. If, when submitted to a vote of the electors of the City, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder; but the measure so repealed shall be deemed sufficient authority for payment in accordance with the ordinance, of any expense incurred previous to the referendum vote thereon.

Toledo

Section 43 of the Toledo Charter permits emergency ordinances “to go into immediate effect” and permits any ordinance to be passed as an emergency provided that “a statement of the fact and nature requiring such ordinance or resolution to go into immediate effect shall be set forth in a separate section of the ordinance or resolution.” The charter specifies that Council’s justification for the emergency “shall be conclusive.” The only legislative actions not eligible for emergency passage are measures “making a grant, renewal, or extension of a franchise, or of a special privilege, or regulating rates to be charged for service by any public utility.”

While Toledo’s options for emergency designation are essentially as broad as possible under the parameters of Ohio law, Sec. 81 of the city’s charter states: “Every ordinance shall be subject to the referendum.” The referendum process is essentially the same for ordinances passed with or without emergency designation. All are subject to referendum if a petition is perfected within 30 days after “adoption” of the ordinance.¹³ If an emergency measure is

¹³ February 17 and 18 interviews with Toledo Clerk of Council

subject to a referendum, it remains in effect until successfully repealed by a vote of the people and any expense incurred by the ordinance prior to the repeal is to be paid.¹⁴

Dayton

Sec. 42 of Dayton’s City Charter places all ordinances into effect 30 days after passage except for emergency ordinances. Emergency measures may “take effect at the time indicated therein.” “An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health or safety, or providing for the usual daily operation of a municipal department, in which the emergency is set forth and defined in a preamble thereto.” The only legislative actions not eligible for emergency passage are measures: “making a grant, renewal or extension of a franchise or other special privilege, or regulating the rate to be charged for its services by any public utility.”

In Dayton, any ordinance proposing new legislation or repealing existing legislation may be submitted by a petition signed by “at least ten percent of the total number of registered voters in the municipality.”¹⁵ Sec. 34 of the charter addresses the effect of referendum repeal of an existing ordinance: “In case a petition be filed requiring that a measure passed by the Commission providing for an expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such actual expenditure, actual issuance of bonds, or actual execution of a contract for such improvement, may be taken prior to the election.”

Akron

Sec. 35 of Akron’s charter permits a two-thirds majority of council to pass any measure as an emergency if the reason for emergency passage “is set forth and defined.” Rather than taking effect 30 days after passage, an emergency ordinance takes effect “at the time indicated therein.” The only legislative actions not eligible for emergency passage are measures: “making a grant, renewal or extension of a franchise or other special privilege, or regulating the rate to be charged for its services by any public utility.” Passage by emergency permits an ordinance to go into effect immediately, but Sec. 20 makes “[a]ny ordinance or resolution passed by the Council” “subject to referendum” with specific enumerated exceptions:

- a) Whenever the Council is by law required to pass more than one (1) ordinance or resolution to complete the legislation necessary to make and pay for any public improvement, the provisions of Sections 17 to 26, inclusive, in this Charter shall

¹⁴ Charter of the City of Toledo, Sec. 85.

¹⁵ Charter of the City of Dayton, Sec. 21.

apply only to the first ordinance or resolution required to be passed and not to any subsequent ordinances or resolutions relating thereto

- b) Ordinances or resolutions providing for appropriations for the current expenses of the City, or for street improvements petitioned for by the owners of the majority of the feet front of the property benefited and to be specially assessed for the cost thereof, and
- c) “[E]mergency ordinances or resolutions necessary for the immediate preservation of the public peace, health or safety shall go into immediate effect, or at the time stated in the ordinance.

Using language similar to Cleveland’s charter, Akron makes a distinction between ordinances passed by “emergency” for convenience or practical necessity versus ordinances passed to address actual crises. If an ordinance passed as an emergency is subsequently repealed by referendum, “it shall be considered repealed as regards any further action thereunder, and all rights and privileges conferred by it shall be null and void.” However, the repealed measure is still “deemed sufficient authority for any payment made or expense incurred in accordance with the measure previous to the referendum vote thereon.”

Youngstown

Section 11 of Youngstown’s charter provides for the passage of emergency ordinances. Rather than taking effect in 30 days after passage, emergency ordinances “take effect at the time indicated therein.” Youngstown’s charter, on its face, defines the appropriate uses of emergency passage more narrowly than any other Ohio city discussed in this research: “An emergency measure is an ordinance or resolution necessary for the immediate preservation of the public peace, property, health, or safety.” The language of Youngstown’s charter suggests that emergency passage is only permissible in the circumstances that Cleveland or Akron’s charters differentiate as actual public crises. Youngstown includes the same prohibition against using emergency ordinances for any measure “making a grant, renewal or extension of a franchise or other special privilege, or regulating the rate to be charged for its service by any public utility”

Like Cincinnati, passage by emergency in Youngstown precludes the opportunity to challenge the ordinance by referendum.

Analysis of the Issue.

Cincinnati is alone among Ohio cities with populations over 100,000 in permitting the use of emergency passage to negate the right of the citizens to repeal ordinances through a referendum process under all circumstances. The cities of Parma (pop. 81,601), Canton (pop. 73,007), and Lorain (pop. 64,097) are statutory cities, meaning that they do not exercise home rule authority, do not have charters and defer to the municipal provisions of the Ohio Revised Code. Within the top ten largest cities in Ohio, only Cincinnati and Youngstown have charters that permit emergency passage to shield all legislative action from repeal through referendum.

On its face, Youngstown's charter places a higher bar on what ordinances are eligible for emergency designation. Unlike Akron, Dayton, Cincinnati, Cleveland, Columbus and Toledo, that all either expressly or implicitly permit ordinary business to be given emergency status, Youngstown's charter only permits emergency passage in instances where it is necessary for the "immediate preservation of the public peace, property, health, or safety."

Youngstown is, however, an example of how attempting to restrict the use of emergency ordinances through semantics has failed. Although the language in Youngstown's charter that defines "emergencies" is similar to the language that Cleveland and Akron use to distinguish everyday "emergencies" from actual public crises, the language is not given any meaningful significance in Youngstown government. Youngstown passes essentially all ordinances by emergency and typically relies upon boilerplate language to meet its own higher threshold for emergency passage.¹⁶

In theory, the Ohio Constitution and case law interpreting it places some limitations on the potential abuse of emergency ordinances. Ohio courts refuse to interpret "emergency" judicially. What constitutes an "emergency" is a political question left up to municipal governments. Generally speaking, the recourse for the abuse of emergency ordinances is entirely political (i.e. voters are expected to demonstrate disapproval at the polls.) However, the courts have ruled that "[m]unicipal governments cannot completely insulate their decisions from public or judicial inspection merely by classifying them emergency measures."¹⁷ The role of the court "is not to second-guess the municipal legislature's determination that an emergency exists," but the courts are expected to ensure that city councils act with "conscientious compliance with the process mandated for enacting emergency measures."¹⁸

¹⁶ February 18, 2015 interview with Youngstown Clerk of Council, Valencia Y. Marrow.

¹⁷ *State ex rel. Emrick, supra.*

¹⁸ *Id.*

Ohio courts view their role in preventing abuse of emergency status primarily in ensuring that the reason given for the “emergency” is sufficiently specific to inform the citizens. Cincinnati’s charter requires that Council state “the reasons for the necessity of declaring” an ordinance to be an emergency within a separate section of the ordinance itself.¹⁹ All of the other charters discussed in this research as well as the Ohio Constitution itself contain a similarly worded requirement. While the reason for an emergency is not subject to judicial scrutiny, the Supreme Court suggests that the judicial branch is entrusted to ensure that the explanations provided by local legislators are sufficiently informative. “A clear explanation fulfills two important objectives. First, it demonstrates to the public that the legislature weighed fully the nature of the emergency before enacting a remedial measure. Second, it provides the public with relevant information.”²⁰

In 2003, the Ohio Supreme Court responded to the abuse of emergency designation by ruling that:

“ the statutory duty to set forth reasons for an emergency in an ordinance is mandatory. Hence, the failure to do so, for example, by including purely conclusory, tautological, or illusory language in the emergency measure fails to meet the R.C. 731.30 requirements for a valid emergency ordinance.”²¹

The Court provided two specific examples of language in an emergency ordinance that would be insufficient to meet the intent of the explanation requirement. The justification that an ordinance “would be beneficial and would promote the public health, safety, and the economic interest of the community” was insufficiently broad.²² Similarly, an “emergency” zoning ordinance was held to be invalid because the stated emergency was that “the prompt effectiveness of zoning measures [is] necessary to provide appropriate zoning for property in the City and thereby protect the public health, safety and well-being of our citizens.”²³ According to the Ohio Supreme Court, this language provided a legally insufficient explanation

¹⁹ Charter of the City of Cincinnati, Art. 11, Sec. 3.

²⁰ *State ex rel. Emrick, supra.*

²¹ *State ex rel. Webb v. Bliss* (2003), 99 Ohio St.3d 166, 789 N.E.2d 1102. See also *Goodman v. Youngstown* (App.1937), 24 Ohio Law Abs. 696, 702 (“The mere statement that the ordinance is necessary for the preservation of the public peace, health and safety is but a conclusion of the council, without the statement of any reason therefore.”)

²² *Id.*

²³ *Id.* at 170 and 1107.

of the emergency because it "could be applied to *any* zoning change" and was therefore merely conclusory.²⁴

In theory, voters are supposed to be provided with sufficient information in the text of emergency ordinances themselves to let voters judge the competence, effectiveness, accountability and basic honesty of their elected officials. In reality, however, the abuse of emergency designation is so prevalent that judicial limitations seem to be essentially meaningless. Both the cities of Toledo and Columbus join Youngstown in passing "virtually all" of their ordinances by emergency.²⁵ The data produced by the *Business Courier* in 2011 found that Cincinnati was passing roughly 75% of its ordinances by emergency. The statements that go into these ordinances to justify emergency passage appear to be predominately conclusory (e.g. "immediate need") or boilerplate. Ohio courts have found that essentially any justification for an "emergency" is valid as long as it is sufficiently specific to the circumstances, but even this modest restraint seems to be ignored throughout the state. Cleveland's Clerk of Council states that no data is available for the percentage of ordinances that are passed by emergency, but estimates that roughly half of all ordinances are passed by emergency status.²⁶ This raises the possibility that Cleveland may stand alone among Ohio's major cities in attempting to limit its use of emergency designation.²⁷

Conclusions

Cincinnati is not alone in its heavy reliance upon emergency ordinances. However, its use of emergency ordinances should be considered in the context of other factors. First, Cincinnati is alone among major Ohio cities in combining an over-use of emergency designation with a blanket denial of the right to referendum as a result of the emergency designation. Secondly, Article II, Section 6 of Cincinnati's charter states that "Every ordinance shall be fully and distinctly read on three different days unless three-fourths of the members elected to the council dispense with the rule." Article II, Sec. 3 reserves the "initiative and referendum

²⁴ Emphasis in the original text. The quotation specifically references the language in the *State ex rel. Webb* ordinance but is elaborating on this rationale when it cites the unpublished case *Snyder v. Bowling Green* (Dec. 13, 1996), Wood App. No. WD-96-036, 1996 WL 715426.

²⁵ February 17 and 18, 2015 interviews with Toledo Clerk of Council, Gerald Dendinger; and Columbus Clerk of Council, Andrea Blevins.

²⁶ February 17, 2015 interview with Cleveland Clerk of Council, Patricia J. Britt.

²⁷ No research has been done to evaluate whether or not Cleveland is actually passing a significantly lower percentage of ordinances by emergency or not.

powers” of the people, unless a matter is passed as an emergency. Together, these provisions in Art. II, Sections 3 and 6 are intended to provide transparency and accountability to the citizens of Cincinnati by: 1) giving them sufficient advance notice of proposed legislation to have the opportunity to provide input or criticism prior to a vote; and 2) to permit the citizens to reverse an unpopular ordinance if a sufficient number of them are willing and able to do so through the referendum process. These are important safeguards in both the charter and the Ohio Constitution. These provisions reserve a role in government that can be exercised directly by the citizens; and some would argue that these safeguards take on added importance in a 9X electoral system that lacks the direct accountability to individual neighborhoods that is provided by a district or ward system of representation.

The charter empowers Council to waive the three-readings requirement and to pass legislation as an emergency, but the charter seems to envision both of these practices occurring as an exception to the ordinary course of business. Routinely combining waiver of advance readings and emergency passage results in a substantive deprivation of rights that are reserved for the people by the charter (as well as the Ohio Constitution.) The argument may be made that this is simply a reflection of the pace of modern life. The City of Youngstown certainly seems to embrace this philosophy by declaring essentially every action of city council “necessary for the immediate preservation of the public peace, property, health or safety.” However, if the original intent of the charter and the safeguards embodied in it remain valuable to the citizens of Cincinnati, some modification to the emergency ordinance process should be adopted. The charter sections discussed above and reprinted in full below provide examples of the legislative framework that could be used to place some restrictions on the use of emergency ordinances, or to at least extend the right of referendum to most ordinances in accord with general practice of Ohio’s other major cities.

Denial of the right to referendum is the denial of a substantive right of the citizens of the city, but referendums have limited utility. Gathering the required number of signatures in less than 30 days is a difficult or expensive task; and if Cincinnati were to follow the procedures of other Ohio cities, referendum would only result in the repeal of an ordinance after the referendum petition has succeeded at that ballot. Providing citizens with adequate notice of pending legislation and substantive opportunity to express their support for, concerns with, or objection to ordinances in advance of passage is far more critical to ensuring a transparent and representative government.

While this research answers some basic questions about how Cincinnati’s use of emergency ordinances compares to other Ohio cities, it raises a number of additional questions that merit further research. The data for the percentage of ordinances passed with emergency

status in Cincinnati is now several years old, and the percentages from other cities all come from the personal estimations of individual clerks of council. Having accurate data to compare practices among cities would be useful. Similarly, while referendum is available to repeal emergency ordinances in every other major Ohio city, no research has been done to determine how frequently this has been attempted, and how frequently the attempts have been successful. This data could do more than compare practices between Cincinnati and other cities. It could help identify the root of larger and more systemic issues. If the prolific use of emergency passage has not engendered the same challenges or debate in other cities, this may reveal differences between Cincinnati and other cities in the opportunities that Cincinnati provides for public discourse. Litigation and ongoing debate over the right to referendum in Cincinnati via emergency passage may actually be a response to inadequate transparency and opportunity for debate *in advance* of passage -- a problem that may or may not be more acute here than in other cities. Conversely, if every major city in the state is abusing emergency passage in an essentially identical manner, it suggests a need to utilize home rule authority in a new way. The charter must permit city government to operate at the pace of the modern world, but it should also restore the substantive rights that are embodied in the obligation to read legislation on three separate occasions in advance of passage and to provide the opportunity to challenge the legislation by referendum before it takes effect. These requirements may no longer be realistic or practical, but routinely ignoring both results in a fundamental shift in the balance of direct power between the government and its citizens, and does so predominately for the convenience of municipal employees and elected officials.

APPENDIX

EXCERPTS FROM THE CHARTER OF THE CITY OF AKRON

SECTION 35. - EMERGENCY MEASURES.

The Council may, by two-thirds vote of its members, pass emergency measures to take effect at the time indicated therein. Emergency measures shall contain a section in which the emergency is set forth and defined. Ordinances appropriating money may be passed as emergency measures, but no measure making a grant, renewal or extension of a franchise or other special privilege, or regulating the rate to be charged for its services by any public utility, shall be so passed.

SECTION 18. - WHEN ORDINANCES AND RESOLUTIONS SHALL BECOME EFFECTIVE.

No ordinance or resolution shall go into effect until thirty days after it shall have been passed by the Council, except as hereinafter provided.

SECTION 19. - REFERENDUM, HOW ORDERED AND WHEN HELD.

Referendum petitions shall be filed with the Clerk of Council. The Clerk of Council shall not accept for filing any petition which does not purport to contain at least the minimum number of signatures required for submission of the referendum for the approval or rejection of the electors. When a petition signed by seven (7) percent of the electors of the City shall have been filed with the Clerk of the Council within fifty (50) days after an ordinance or resolution shall have been passed by the Council ordering that such ordinance or resolution be submitted to the electors of the City for their approval or rejection and said petition is found to be sufficient by the Clerk of the Council, as hereinafter provided, the election officer, officers or board having control of elections in the City shall cause such ordinance or resolution to be submitted to the electors of the City for their approval or rejection at the next succeeding general election in any year occurring subsequent to sixty (60) days after the Clerk of the Council finds such petition to be sufficient as hereinafter provided. No such ordinance shall go into effect until and unless approved by the majority of those voting upon the same. Nothing in this article shall prevent the City, after the passage of any ordinance or resolution, from proceeding at once to give any notice or make any publication required by such ordinance or resolution.

SECTION 20. - APPLICATION OF REFERENDUM.

Any ordinance or resolution passed by the Council shall be subject to referendum except as hereinafter provided. Whenever the Council is by law required to pass more than one (1) ordinance or resolution to complete the legislation necessary to make and pay for any public improvement, the provisions of Sections 17 to 26, inclusive, in this Charter shall apply only to the first ordinance or resolution required to be passed and not to any subsequent ordinances or resolutions relating thereto. Ordinances or resolutions providing for appropriations for the current expenses of the City, or for street improvements petitioned for by the owners of the majority of the feet front of the property benefited and to be specially assessed for the cost thereof, and emergency ordinances or resolutions necessary for the immediate preservation of the public peace, health or safety shall go into immediate effect, or at the time stated in the ordinance. Such emergency ordinances or resolutions must, upon a "Yea" and "Nay" vote, receive the vote of two-thirds of all the members of the Council, and the reasons for such necessity shall be set forth in one (1) section of the ordinance or resolution. If, when submitted to a vote of the electors, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder, and all rights and privileges conferred by it shall be null and void; provided, however, that such measure so repealed shall be deemed sufficient authority for any payment made or expense incurred in accordance with the measure previous to the referendum vote thereon. The provisions of Sections 17 to 26, inclusive, of this Charter shall apply to pending legislation provided for any public improvement.

EXCERPTS FROM THE CHARTER OF THE CITY OF DAYTON

Sec. 21. - Submission of Proposed Ordinances by Petition. Any proposed ordinance may be submitted to the Commission by petition signed by at least ten percent of the total number of registered voters in the municipality. All petition papers, circulated with respect to any proposed ordinance, shall be uniform in character and shall contain the proposed ordinance in full, and have printed or written thereon the names and addresses of at least five electors who shall be officially regarded as filing the petition and shall constitute a committee of the petitioners for the purposes hereinafter named

Sec. 28. Same--Repealing Existing Ordinance(s). Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the Commission as provided in the preceding sections for initiating ordinances. Initiated ordinances adopted by the electors shall be published and may be amended or repealed by the Commission as in the case of other ordinances.

Sec. 34. Referendum on Emergency Measures. In case a petition be filed requiring that a measure passed by the Commission providing for an expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such actual

expenditure, actual issuance of bonds, or actual execution of a contract for such improvement, may be taken prior to the election.

Sec. 35. Referendum--Primary Action. In case a petition be filed requiring that a measure passed by the Commission providing for an expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such actual expenditure, actual issuance of bonds, or actual execution of a contract for such improvement, may be taken prior to the election.

Sec. 42. - Emergency Measures. All ordinances and resolutions shall be in effect from and after 30 days from the date of their passage by the Commission, except as otherwise provided in this Charter. The Commission may, by an affirmative vote of not less than four members, pass emergency measures to take effect at the time indicated therein. An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health or safety, or providing for the usual daily operation of a municipal department, in which the emergency is set forth and defined in a preamble thereto. Ordinances appropriating money may be passed as emergency measures, but no measure making a grant, renewal or extension of a franchise or other special privilege, or regulating the rate to be charged for its services by any public utility, shall ever be passed as an emergency measure.

EXCERPTS FROM THE CHARTER OF THE CITY OF CLEVELAND

§ 36 Emergency Measures

All ordinances and resolutions shall be in effect from and after thirty (30) days from the date of their passage by the Council except as otherwise provided in this Charter. The Council may by a two-thirds vote of the members elected to the Council, pass emergency measures to take effect at the time indicated in the emergency measure. An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health, or safety, or providing for the usual daily operation of a Municipal department, in which the emergency is set forth and defined in a preamble. Ordinances appropriating money may be passed as emergency measures, but no measure making a grant, renewal or extension of a franchise or other special privilege, or regulating the rate to be charged for its services by any public utility, shall ever be so passed. (Effective November 4, 2008)

§ 49 Ordinances by Initiative Petition

Any proposed ordinance may be submitted to the Council by petition signed by at least five thousand (5,000) qualified electors of the City. All petition papers, circulated with respect to any proposed ordinance, shall be uniform in character and shall contain the proposed

ordinance in full, and have printed thereon the names and addresses of at least five electors of the City who shall be officially regarded as filing the petition and shall constitute a committee of the petitioners for the purposes hereinafter named. (Effective November 8, 1994)

§ 59 The Referendum

No ordinance passed by the Council, unless it be an emergency measure, shall go into effect until thirty (30) days after its final passage by the Council. If at any time within said thirty (30) days, a petition signed by electors equal in number to ten percent (10%) of the total vote cast at the last preceding regular Municipal

election of the City be filed with the Clerk of the Council requesting that the ordinance, or any specified part thereof, be repealed or submitted to a vote of the electors, it shall not become operative until the steps indicated herein have been taken. The petition shall be prepared and filed in the manner and form prescribed in the foregoing sections of this Charter for an initiative petition for an ordinance. (Effective November 4, 2008)

§ 64 Referendum on Emergency Measures

Ordinances passed as emergency measures for the immediate preservation of the public peace, property, health, or safety and providing for the refinancing of bonds, notes or other securities of the City shall not be subject to referendum. Otherwise, emergency measures shall be subject to referendum in like manner as other ordinances, except that they shall go into effect at the time indicated in the ordinances. If, when submitted to a vote of the electors of the City, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder; but the measure so repealed shall be deemed sufficient authority for payment in accordance with the ordinance, of any expense incurred previous to the referendum vote thereon. (Effective November 4, 2008)

EXCERPTS FROM THE CHARTER OF THE CITY OF COLUMBUS

§ 22. Emergency measures. All ordinances and resolutions shall be in effect from and after thirty days from the date of their passage by the council except as otherwise provided in this charter. The council may, by a vote of six of its members, pass emergency measures to take effect at the time indicated therein. An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health or safety, or providing for an emergency in the usual daily operation of a municipal department, in which the emergency is set forth and defined in a preamble thereto.

§ 23. Subjects for emergency ordinances. Ordinances appropriating money may be passed as emergency measures, but no measure making a grant, renewal or extension of a franchise or

other special privileges, or regulating the rate to be charged for its service by any public utility, shall ever be so passed

§ 48. The referendum. No ordinance passed by the council except as otherwise provided by this charter, shall go into effect until thirty days after its final passage by the council. If at any time within said thirty days, a petition signed by registered electors of the city, not less in number than five per cent of the total vote cast at the last preceding general municipal election be filed with the city clerk requesting that any such ordinance be repealed or submitted to a vote of the electors of the city, it shall not become operative until the steps indicated herein have been taken. All petition papers circulated with respect to the repeal of any such ordinance shall be uniform in character and have printed thereon the names and addresses of at least five electors of the city who shall be officially regarded as filing the petition.

§ 54. Referendum on emergency measures. Ordinances passed as emergency measures shall be subject to referendum in like manner as other ordinances, except that they shall go into effect at the time indicated in such ordinance. If, when submitted to a vote of the electors, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder; but such measure so repealed shall be deemed sufficient authority for payment, in accordance with the ordinance, of any expense incurred previous to the referendum vote thereon.

§ 55. When referendum does not apply. The following ordinances or measures shall not be subject to the referendum, but shall go into effect at the time indicated therein:

(a) The annual appropriation ordinance.

(b) In all cases where council is required to pass more than one ordinance or other measure to complete the legislation necessary to make and pay for any public improvement, the referendum shall apply only to the first ordinance or measure required to be passed and not to any subsequent ordinances or measures relating thereto, and said first ordinance or measure shall clearly state the purpose and general scope of the improvement.

(c) Ordinances or resolutions providing for the approval or disapproval of appointments or removals by the mayor, and appointments or removals made by council.

(d) Action by the council on the approval of official bonds.

(e) Ordinances or resolutions providing for the submission of any proposition to a vote of the electors.

EXCERPTS FROM THE CHARTER OF THE CITY OF TOLEDO

Section 39. Reading and passage-suspension of requirement.

Each ordinance or resolution of a general, or permanent nature, or one granting a franchise, or creating a right, or involving the expenditure of money or the levying of a tax, or for the purchase, lease, sale or transfer of property, shall be introduced and read one time only, which reading shall be by title only unless a member of the Council shall request that it be read in full, and such ordinance or resolution shall be passed, which passage may be without further reading, not earlier than the next succeeding regular or special meeting of the Council provided that such prohibition may be suspended by a three-fourths vote of the members of the Council taken by "yeas" and "nays" and entered on the journal of the Council, in which event such passage may occur at the meeting at which the ordinance or resolution is introduced and read.

Section 43. Emergency measures - passage.

No ordinance or resolution shall be passed as an emergency measure unless a statement of the fact and nature requiring such ordinance or resolution to go into immediate effect shall be set forth in a separate section of the ordinance or resolution. The determination of the Council that the fact and nature set forth in such section requires the ordinance or resolution to go into immediate effect shall be conclusive. In the event that the inclusion of an emergency section in an ordinance or resolution receives the two-thirds affirmative vote required by Section 40, then such ordinance or resolution shall be an emergency measure and take effect immediately even though it receives on the vote on passage of such ordinance or resolution only an affirmative vote of a majority of the members of Council. No measure making a grant, renewal, or extension of a franchise, or of a special privilege, or regulating rates to be charged for service by any public utility, shall ever be declared an emergency measure.

Section 43A. Mayor's Veto Power.

Any ordinance or resolution passed by the Council shall be signed by the President of Council or other presiding officer and attested to by the Clerk of Council, who shall, unless otherwise provided herein, present it forthwith to the Mayor. If the Mayor approves such ordinance or resolution, the Mayor shall sign it and return it to the Clerk within ten (10) days after its passage or adoption by the Council; but if the Mayor does not approve it, the Mayor shall within said ten (10) days return it, as vetoed, together with the Mayor's objections, to the Clerk of the Council, who shall transmit the same to the Council at the next regular meeting thereof, which objections the Council shall cause to be entered in full on its Journal. The Mayor may approve or veto the whole or any item or part of an ordinance or resolution; provided, however, that the Clerk shall not present to the Mayor and the Mayor may not veto the whole or any item or part of any measure which has been duly initiated by the electors or is subject to mandatory referendum under either Section 5 or Chapter VI of this Charter. If the Mayor does not sign or return an ordinance or resolution as approved or vetoed within said ten (10) days after its passage or adoption, it shall take effect in the same manner as if the Mayor had approved and signed it on the tenth day.

Section 43B. Power of Council to Override.

When the Mayor exercises the veto power as to any ordinance or resolution, or part thereof, and returns it to the Council with the Mayor's objections, the Council shall, at the next regular meeting, proceed to reconsider it, and if upon reconsideration, the resolution or ordinance, or part, or item thereof disapproved by the Mayor be approved by a three-fourths (3/4) vote of all members of the Council, it shall then take effect without the signature of the Mayor. In all such cases the votes shall be taken by yeas and nays and entered on the Journal.

Section 81. Referendum on Petition.

Every ordinance shall be subject to the referendum if at any time within thirty (30) days after its adoption a petition signed by electors of the City equal in number to at least twelve percent (12%) of the total number of votes cast for all candidates for Mayor at the most recent general election at which the Mayor was elected be filed with the Clerk requesting that such ordinance be submitted to the people for consideration.

Section 85. Emergency measures subject to referendum.

An emergency measure shall be subject to a referendum as other ordinances or resolutions. If, upon a referendum, it be not approved, it shall stand repealed, but any expense incurred in accordance with the provisions thereof and before the disapproval by referendum shall be paid under the authority thereof as if the measure were still effective. Until repealed upon referendum it shall continue effective.

EXERPTS FROM THE CHARTER OF THE CITY OF YOUNGSTOWN

Section 11. All ordinances and resolutions shall be in effect from and after thirty (30) days from the date of their passage by the Council except as otherwise provided in this Charter. The Council may, by a vote of six of its members, pass emergency measures to take effect at the time indicated therein. An emergency measure is an ordinance or resolution necessary for the immediate preservation of the public peace, property, health, or safety.

Section 12. Ordinances appropriating money may be passed as emergency measures, but no measure making a grant, renewal or extension of a franchise or other special privilege, or regulating the rate to be charged for its service by any public utility, shall ever be so passed; nor shall any ordinance, resolution or any other measure ever be passed providing for the levying or assessing of an occupational tax, upon the various trades, professions, occupations, businesses or employments carried on and performed in the City of Youngstown, without having first submitted such ordinance, resolution, or other measure providing therefor, to a vote of the electors of the City of Youngstown, and having been approved by a majority of the electors voting thereon. (Amended November 3, 1925)

Section 82. The provisions of the Revised Code as to the Initiative and Referendum shall remain in full force and effect, except that the number of electors necessary for an initiative

petition shall be three per cent, and for a referendum petition six percent, and such petition shall be filed with the City Clerk. Council shall provide proper forms of petitions for the Initiative, Referendum and Recall, which shall be kept in the custody of the City Clerk from whom any citizen may obtain them under such reasonable rules and regulations as Council may by ordinance prescribe.